

No. 111-13

WILLIAM A. IRVING

Plaintiff

UNITED PLANT GROUND WORKERS OF AMERICA

LOCAL 114, a Labor Organization

EDWARD J. DOYLE, DEPUTY CHIEF OF POLICE

and W. E. CONNELLEY

Jointly and Severally

Defendants

ON PETITION FOR A WRIT OF HABEAS CORPUS IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

No. 819

WILLIAM C. LINN,
Petitioner,

vs.

**UNITED PLANT GUARD WORKERS OF AMERICA,
LOCAL 114, a Labor Association,
LEO J. DOYLE, BENTON I. BILBREY
and W. T. ENGLAND,
Jointly and Severally,
Respondents**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BRIEF IN OPPOSITION

United Plant Guard Workers of America, Local 114, a labor organization, Benton I. Bilbrey and W. T. England, some of the respondents herein, oppose the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on October 13, 1964.

STATEMENT OF QUESTION PRESENTED

Does a state or federal court have jurisdiction over the subject matter of a civil action for libel where such action is based upon activities which are arguably subject to Section 7 or Section 8 of the National Labor Relations Act, as amended?

STATEMENT

The statement of the case contained in petitioner's brief is substantially correct except for the paraphrasing of the opinion of the Court of Appeals contained at its conclusion and except for the omission of the following facts which these respondents deem material.

From about the first of November, 1962 to at least the date this suit was commenced, United Plant Guard Workers of America, Local 114, had been engaged in an organizational drive in the Detroit area among the employees of Pinkerton's National Detective Agency, Inc., petitioner's employer (R 11a, 3a).*

The alleged false and defamatory matter allegedly published on or about December 7, 1962 was set forth in Counts I and II of the complaint, as follows:

“(7) Now we find out that Pinkerton's has had a large volume of work in Saginaw they have had it for years.

United Plant Guard Workers now has evidence,

A. That Pinkerton has 10 jobs in Saginaw, Michigan.

* “R” refers to the appendix to the petitioner's brief filed in the Court of Appeals.

B. Employing 52 men.

C. Some of these jobs are 10 years old!

(8) Make you feel kind sick & foolish.

(9) The men in Saginaw were deprived of their *right* to VOTE in three N.L.R.B. elections. Their names were not submitted (sic). These guards were voted into the Union in 1959! These Pinkerton guards were *robbed* of pay increases. The Pinkerton managers (sic) were LYING to us—all the time the contract was in effect.

No doubt the Saginaw men will file criminal charges.

“Somebody may go to Jail!” (R 4a, 5a, 6a)

In Count I, petitioner alleged that he “is and was one of the managers referred to by defendants” (R 5a). In Count II, petitioner alleged that he “is specifically named elsewhere in the publication as one of the managers referred to in the words and material quoted immediately above” (R 6a).

On December 11, 1962, petitioner’s employer filed with the Detroit office of the National Labor Relations Board a charge against United Plant Guard Workers of America (Ind.) Local 114 based upon the same activities described in petitioner’s complaint (R 18a, 12a). After an investigation the Acting Regional Director refused to issue a complaint stating:

“The basis for refusing to proceed in this matter is as follows:

“The above-mentioned charge against United Plant Guard Workers of America, Local 114, was based upon four allegedly objectionable leaflets prepared and circulated by an employee of your company. Such employee was not an officer or member of the charged union, nor was there any evidence that he was acting as an agent of such union. There

is no evidence that the union was involved in any respect in the drafting and circulation of the leaflets. In view of the fact that the union is not responsible for the distribution of said leaflets, the charge against the union is wholly without basis." (R 23a, 24a)

The Office of the General Counsel sustained the ruling of the Regional Director on the same grounds (R 37a).

ARGUMENT

I.

THE DECISION BELOW IS CLEARLY CORRECT

The activities complained of in this action are arguably subject to Section 7 or Section 8 of the National Labor Relations Act, as amended (29 U.S.C. §§157, 158, 61 Stat. 140), hereinafter referred to as the "Act".

The general rule with respect to the exercise of jurisdiction by state or federal courts over such activities was stated in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) as follows:

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that state jurisdiction must yield (p. 244).

* * * *

"When an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted" (p. 245).

The sole exception to this general rule was stated in *Garmon* itself as follows:

"It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. *United Automobile Workers v. Russell*, 356 U.S. 634; *United Construction Workers v. Laburnum Corp.*, 347 U.S. 656. We have also allowed the States to enjoin such conduct. *Youngdahl v. Rainfair*, 355 U.S. 131; *Auto Workers v. Wisconsin Board*, 351 U.S. 266. State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction" (p. 247).

That violence or threats of violence were the sole basis for the exercise of jurisdiction by state courts in such cases was emphasized in the footnotes to Justice Frankfurter's majority opinion in *Garmon*. Discussing *United Construction Workers v. Laburnum*, 347 U.S. 656, he said:

"Throughout, the opinion of the Court makes it clear that the holding in favor of state jurisdiction was limited to a situation involving violence and threats of violence" (fn. 6, p. 248).

In the same footnote, he stated:

"In *Russell* we again allowed the State to award damages for injuries caused by 'mass picketing and threats of violence, * * *' 356 U.S. at 638. That opinion also continually stresses the violent nature of the conduct and limits its decision to the 'kind of tortious conduct' there involved" (fn. 6, p. 249).

Both the district court and the court of appeals held that the *Garmon* decision controlled the present case and since

there was no violence or threat of violence, the court was precluded from exercising jurisdiction.

Most of the other courts before which the same question has been raised have similarly concluded that state or federal courts have no jurisdiction over libel suits arising out of union organizational activity or contract negotiations. *Blum v. International Association of Machinists*, 80 N.J. Super. 37 (1963), affirmed 42 N.J. 389, 201 A 2d 46 (1964); *Hill v. Moe* (Alaska Sup. Ct. 1961), 367 P 2d 739, cert. den. 370 U.S. 916 (1962); *Schnell Tool & Die Corp. v. United Steelworkers* (Ohio C. P. 1964), 200 N.E. 2d 727; *Warehouse and Produce Workers Local 599, I.B.T. v. United States Gypsum Co.* (Wash. Super. Ct. 1963), 56 LRRM 2829; 50 CCH Lab. Cas. 19, 196; *Troidl v. Keough* (N.Y. Sup. Ct. 1964), 254 N.Y.S. 2d 240; *Inland Air Conditioning v. Bergan* (Cal. Super. Ct., Riverside Co., 1964), 57 LRRM 2296.

The decision to the contrary relied upon by petitioner is the recent decision of the Supreme Court of Pennsylvania in *Meyer, et al. v. Joint Council 53, International Brotherhood of Teamsters*, — Pa. —, 206 A 2d 382 (1964).

To reach the conclusion that a state court had jurisdiction over the subject matter of a libel suit arising out of a union organizing campaign, the Pennsylvania court expressly rejected the language of *Garmon*, saying in a footnote with reference to the present case:

“The theory on which this holding was predicated was that under *Garmon* only violence or the threat of violence would permit the exercise of such jurisdiction. We cannot agree that the language used in *Garmon* justifies such a narrow interpretation of the area of jurisdiction left to the state and federal courts” (206 A 2d at 385).

Having rejected the clear rule of *Garmon*, the Pennsylvania court found it had jurisdiction because libelous words had a *tendency* to cause a breach of the peace. There was, therefore, a compelling state interest, especially in the maintenance of domestic peace upon which state jurisdiction over a libel suit could be predicated.

The Pennsylvania court also indicated its belief that libelous utterances were an "extremely peripheral labor activity" (206 A. 2d at 387). This, too, was answered by *Garmon*. If the activity is arguably subject to Section 7 or 8 of the Act, it is *not* peripheral.

Respondents submit that the Pennsylvania court erred in rejecting *Garmon*. Moreover, it committed serious error in its attempt to create another exception to *Garmon*. If the test upon which state jurisdiction is to be determined is whether an activity arguably subject to Section 7 or Section 8 of the Act has a tendency to cause a breach of the peace, the entire *Garmon* rule will be destroyed. Because of the nature of such activities and the realistic consideration that labor-management relations are often close to violence, the proposed exception could wipe out the general rule.

For the above reasons, the respondents believe the decision below is clearly correct.

II.

THERE IS NO CONFLICT OF DECISIONS BETWEEN
COURTS OF APPEAL

Petitioner asserts that *Bouligny, Inc. v. United Steelworkers of America, AFL-CIO* (4th Cir. 1964), 336 F 2d 160, holds that a state court has jurisdiction over a suit for libel although the defendant's activities may be arguably subject to Section 7 or Section 8 of the National Labor Relations Act.

An examination of this case discloses that the court merely held that the fact the libel was committed during an organizing campaign was insufficient to convert a common law tort into a federal question. The cause was remanded to the state court in which it was commenced. It does not appear that the pre-emption question was raised or considered by the court in reaching its decision. A ruling on this question was unnecessary to the decision of the court.

To assert that the decision of the Court of Appeals for the Sixth Circuit in the present case conflicts with the decision in the *Bouligny* case, *supra*, requires substantial and unwarranted interpolation of the latter decision.

III.

THE SUPREME COURT HAS ALREADY DECIDED
THE QUESTION PRESENTED

Respondents believe that the question presented in the petition for certiorari herein has already been decided by this Court in the case of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), discussed *supra*, and that there is no reason for a reconsideration of such decision.

The *Garmon* case was re-affirmed by this Court in *Local 438, Construction and General Laborers v. Curry*, 371 U.S. 542 (1963) in which it was held that a Georgia court had no jurisdiction to enjoin picketing which was at least an arguable violation of Section 8(b) of the Act; the National Labor Relations Board was said to have exclusive jurisdiction.

Again, in *Local 100, United Association of Journeymen and Apprentices v. Borden*, 373 U.S. 690 (1963) and *Local 207, International Association of Bridge Workers v. Perko*, 373 U.S. 701 (1963), it was held that state courts lacked jurisdiction of union members' damage actions against their unions for refusal to refer a member to a job and for causing a discharge and preventing subsequent employment of a member. Since the unions' conduct was arguably subject to Section 8 of the Act, it was within the exclusive jurisdiction of the Board.

The purpose of the *Garmon* rule was to avert the danger of state interference with national policy. As was stated in *Garmon*, at page 246:

"The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict, with national labor policy."

No one has disputed the soundness of the general rule or the validity of its purpose. The sole exception was founded on the compelling state interest in preserving domestic peace where there was actual violence or a threat of violence. Further exceptions based upon a tendency to violence or the nature of the injury suffered would not only increase the danger of interference with national labor policy, but might make the rule of *Garmon* so difficult to apply that it would become meaningless.

From *Hill v. Florida*, 325 U.S. 538 in 1945 to *Garmon*, *supra*, in 1959, was a long and weary way. The question as to the extent of federal pre-emption in the field of labor-management relations, and particularly the extent to which the original jurisdiction of the National Labor Relations Board is exclusive, sorely perplexed bench and bar. This question was certainly the subject of innumerable arguments and briefs in lower courts, both state and federal, in cases which were never appealed and therefore never reported. The search for a workable formulation by which bench and bar could be guided with reasonable certainty appears to have ended with *Garmon*.

Now to weaken the authority of that case on the dubious proposition that a defamatory statement by a union protagonist concerning an employer, published in the heat of an organizing campaign, where the alleged defamatory statement itself relates to the employer's alleged conduct in the area of labor relations, "tends to create violence" would be a regrettable retreat from certainty to doubt. The flood gates would open again to endless litigation over the respective areas of state and federal jurisdiction in every case in which the fertile imagination of an advocate could persuasively depict a "tendency" of particular conduct to create a situation within state jurisdiction as defined in *Garmon*.

It is true that there will be cases, such as this, in which the remedies of an individual may be curtailed. That this would happen was also recognized in *Garmon* when it was stated at pages 246, 247:

"Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as through some form of preventative

relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme."

This case, in fact, illustrates the validity of the *Garmon* rule. The alleged defamatory material affected petitioner solely in his capacity as a manager of Pinkerton's National Detective Agency, Inc., and it was directly related to the union's organizing efforts. The National Labor Relations Board has investigated the matter and made a determination that these respondents were not responsible for the defamatory material. This determination was made after careful investigation by an administrative agency "armed with its own procedures, and equipped with its specialized knowledge and cumulative experience" (*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242 [1959]).

The problems between Pinkerton's and these respondents, arising out of the activities involved in this case have been resolved. If petitioner is permitted to maintain this action, the relations between his employer and these respondents would become more strained, thus hindering the national labor policy. If a jury were to find these respondents responsible for the defamatory material, the prestige and processes of the National Labor Relations Board would be seriously undermined.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: April 2, 1965.

